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No. 737. June Term, 1877.

In the Court of Common Pleas, No. 2,

OF PHILADELPHIA COUNTY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

WILLIAM J. DONOHUGH.

COMPLAINANT'S BRIEF.

Wm. Henry Rawle,
R. C. McMurtrie.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Philadelphia.

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The Library Company of Philadelphia

vs.

Donohugh.

COMPLAINANT'S BRIEF.

This is a bill filed to declare the rights of the complainant as a public charity, and to restrain the enforcement of an alleged claim for delinquent taxes.

Article IX., section 1, of the new Constitution of Pennsylvania declares:—"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit and institutions of purely public charity."

The act of May 14th, 1874 (P. L., 158), passed to carry into effect this constitutional provision, provides that "all churches, meeting-houses or other regular places of stated worship, with the grounds thereto annexed necessary for the occupancy and enjoyment of the same; all burial-grounds not used or held for private or corporate profit; all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded,

endowed and maintained by public or private charity; and all school-houses belonging to any county, borough or school district, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same; and all court-houses and jails, with the grounds thereto annexed, be and the same are hereby exempted from all and every county, city, borough, bounty, road, school and poor tax: *Provided*, That all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except where exempted by law for State purposes, and nothing herein contained shall exempt same therefrom."

Under their construction of these enactments, the Board of Revision of Taxes has declared the building and grounds actually used by the complainant as and for its library to be exempt from taxes.

The defendant is the collector of delinquent taxes for this county, and threatens and intends to proceed against the complainant as a delinquent tax-payer, on the ground—

1. That the complainant is not a purely public charity within the provision of the Constitution;

2. That the act of 1874 is unconstitutional; and,

3. That the Board of Revision of Taxes has no power to exempt the complainant.

I.—The Complainant is a Purely Public Charity within the Provision of the Constitution.

As appears by the bill and the special injunction affidavit, the complainant, by deed dated July 1st, 1731, was

founded at Philadelphia by Benjamin Franklin, James Logan and others, as an institution for the advancement of learning and the more useful dissemination of knowledge, and the first meeting of the directors thereof was held on the first day of November, 1731.

The books composing the library were originally placed on the shelves "of Robert Grace's chamber, at his house in Jones' alley," and the librarian was, by the rules, required to permit "any civil gentleman to peruse the books of the library in the library-room."

On the 25th of March, 1742, John, Thomas and Richard Penn, proprietaries of Pennsylvania, by letters patent, reciting that Benjamin Franklin and others therein named, had, "at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the city of Philadelphia," and, "being truly sensible of the advantage that may accrue to the people of this province by so useful an undertaking and being willing to encourage the same," created a body corporate by the name of "The Library Company of Philadelphia."

The complainant is also trustee of a collection of books, known as The Loganian Library. In the act of March 31st, 1792, annexing this collection to the complainant's library, it is recited that, by deed dated March 8th, 1745, James Logan, "influenced by the patriotic desire of extending the benefits of learning among his fellow citizens," conveyed the same to certain trustees "for the use of the inhabitants of the city of Philadelphia;" that by deed dated August 28th, 1754, it was provided that "the library should be opened for the public use of the citizens and that books might be borrowed therefrom under certain restrictions;" and that "the said library was thereupon opened for public use."

Since the year 1793 this collection of books, which now

exceeds ten thousand volumes and is one of the most valuable of the kind in the country, has always been kept in the same building as that of the Library Company and under the care of the same librarian.

Books may be taken out of the Loganian Library without charge by any person who may leave a deposit of double their value as security.

The corporation complainant is managed by twelve directors, chosen annually by the members or commutors, and is supported from—

1. The income of real and personal estate derived from accumulation, devise or gift.

2. Income derived from the hire of books by the public at large.

3. The annual contributions of its members or commutors.

And the use of the library is given to—

1. *All* persons within the library building without fee or reward.

2. *All* persons outside the building who pay a small hire and leave a deposit.

3. *All* commutors or members who pay annually, instead of each time they take out a book.

But no part of the money so paid goes to the private gain or profit of any of the commutors or members,—it all goes, after the necessary expenses of fuel, service, &c., to the increase of the library. Any diminution of the income, as, for example, for taxes, simply diminishes the fund whereby to maintain and increase the books.

Institutions of this character have invariably been held to be "charities, within the legal definition of that term."

A charity was defined by Mr. Binney, in his celebrated argument in Vidal *vs.* Girard, 2 Howard, to be

"Whatever is given for the love of God or for the love of your neighbor, in the catholic and universal sense; given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private and selfish."

So Lord Camden, in Jones *vs.* Williams, Amb., 652, described a charity as "a gift to a general public use which extends to the poor as well as the rich."

So in Gerke *vs.* Purcell, 25 Ohio St., 243, it was said, "The meaning of the word 'charity,' in its legal sense, is different from the signification which it ordinarily bears. In its legal sense it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose. 2 Steph. Com., 229."

But, perhaps the most lucid definition is contained in Jackson *vs.* Phillips, 14 Allen, 556, wherein Mr. Justice Gray said, "A charity in a legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion; by relieving their bodies fron disease, suffering or constraint; by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."

So, too, a charity is none the less purely public because endowed by private means. The source of its support or continuance is immaterial, so long as the purpose is a public one.

Thomas *vs.* Ellmaker, 1 Parsons' Eq., 98.

2 Perry on Trusts, section 707.

The test is, are the benefits to be confined to the members themselves, or are they extended to that indefinite class, the public?

As to this, two of our own recent cases are in point:—

Swift *vs.* Easton Society, 23 P. F. Smith, 362, and

Bethlehem *vs.* Fire Co., 31 *id.*, 457.

In the former, a beneficial society, whose benefits were confined exclusively to its own members, was declared not to be a charity, inasmuch as "its benevolence begins and ends at home;" while in the latter, where a fire company was organized for "the protection of the property of our fellow-citizens from fire," the Court said, "its object was not for the private gain and profit of its members, but for the public benefit. It existed for no other or different purpose. The property which it acquired in aid of its object was, therefore, for charitable uses."

Hence, gifts to found institutions similar to the present have always been held to be gifts to charitable purposes.

Thus of a gift to the British Museum; Trustees *vs.* White, 2 Sim. & Stu., 594.

> "This is an institution established by the legislature for the collection and preservation of objects of science and art, partly supplied at the public expense and partly from individual liberality, and intended for the public improvement," &c.—LEACH, V. C.

To establish a perpetual botanical garden for the public benefit; Townley *vs.* Bedwell, 6 Vesey, 194.

A gift to the United States of America, to found at Washington, under the name of the Smithsonian Institute, "an establishment for the increase of knowledge among men;" President of the United States *vs.* Drummond, cited 7 House Lords Cas., 141, 155.

A bequest to trustees, to be applied "according to their discretion, for the advancement and propagation of education and learning all over the world;" Whicker *vs.* Hume, 7 House Lords Cas., 124.

To establish an institution for studying and endeavoring to cure maladies of any quadrupeds or birds useful to man; University *vs.* Yarrow, 23 Beavan, 159; Affirmed, 1 De Gex & Jones, 72.

To assist "a literary man;" Thompson *vs.* Thompson, 1 Collyer, 395.

To maintain "public lectures for the promotion of moral, intellectual and physical instruction and education of the inhabitants of Boston;" *re* Lowell, 22 Pickering, 215.

To "print, publish and propagate the sacred writings of Joanna Southcott;" Thornton *vs.* Howe, 31 Beavan, 14.

To "distribute good books among poor people in the back part of Pennsylvania;" Pickering *vs.* Shotwell, 10 Barr, 23.

To the Mayor of Philadelphia, to expend the income "in planting and renewing shade trees, especially in situations now exposing my fellow-citizens to the heat of the sun;" Cresson's Appeal, 6 Casey, 437.

To the Pennsylvania University, "to endow a professorship of fine arts;" *id.*, 6 Casey, 437.

To expend the income in rewards for discoveries and improvements on light and heat most useful to mankind; American Academy *vs.* Harvard College, 12 Gay, 551.

So in Miller *vs.* Porter, 3 P. F. Smith, 292, of a bequest "of $50,000, to be expended in the purchase of a lot or

lots and the erection of a college or university, *with library-rooms*, &c., to be located in or near Tarentum, together with my library, and *$6000 additional, to be expended in the purchase of useful books for the library*, and it is my wish that the said college or university be known as the Porter University or College."

The school was *not* to be a free school. But the Court said, by Woodward, C. J. (page 301), "How is the Porter University to be distinguished and taken out of the line of our decisions? You say it was not founded to promote religion or religious education, but to immortalize the founder, and therefore it was not a charity. If the premises be granted, the conclusion does not follow, because, though it has no stamp of religion, and the selfishness of motive may take away from it the high and abstract quality of a Christian charity, *yet it was to be a seat of learning —a university—a centre from which the rays of educated intelligence were to radiate in all directions;* and if to found a school-house at the cross-roads of a township be a legal charity, though the selfish motive be apparent, much more to found such a university is a legal charity. And if a charity, within the legal sense of that word, then it is as much within the purview of the statute as the bequest to the West Town School, and Price *vs.* Maxwell rules the case.

"*No matter that it was not to be a free school; it was to bring the opportunities of education nearer home to the people; and he who cheapens popular education or tempts a larger number into wisdom's way is a public benefactor, and what he does is, in the sense of the statute, a charity.*"

Numerous other authorities to the same effect will be found in 2 Perry on Trusts, section 700, and the principle of these decisions finally culminated in Drury *vs.* Natick, 10 Allen (Mass.), 179, wherein the question was expressly decided.

A testatrix devised and bequeathed all her realty and personalty "to the inhabitants of the town of Natick, for the purpose of founding and establishing a literary institute for the use and benefit of all the inhabitants of said town, under and according to the provisions and regulations hereinafter contained.

"*Second.*—Said institute shall be named and called the Morse Institute, and its object and purpose shall be to promote and disseminate learning and intelligence among the inhabitants of said town by the means of a library, to be composed of the best standard works in the various departments of science and literature; and also by means of a reading-room, if the funds hereby created shall be found sufficient, and the trustees herein named shall deem it advisable to establish the same. * * * *

"*Sixth.*—Said library and reading-room shall be forever free for the use of all the inhabitants of said town, subject to such rules and regulations as said trustees may from time to time establish."

"A doubt was expressed by one of the learned counsel," said Gray, J., in delivering the opinion, "whether this was a public charity. But the Court can see no foundation for any doubt upon this subject. * * * It is well settled, both in England and America, that in determining what uses are charitable within the statute of Elizabeth, courts are to be guided, not by its letter, but by its manifest spirit and reason, and are to consider, not what uses are within its words, but what are enclosed in its meaning and purpose. There are no better illustrations of this than in the cases of gifts to towns and cities and for the promotion of education and useful knowledge. * * * The only modes of education enumerated in the statute are schools of learning, free schools and scholars in universities. But gifts for the promotion of science, learning and useful knowledge by other means

than schools or colleges or direct instruction of pupils or students are equally public and charitable. * * * * Charities for the promotion of education and learning have not been confined in this Commonwealth within the words of the statute of Elizabeth. Chief Justice Shaw, in the case of Count Rumford's Legacy, said, "That a gift designed to promote the public good, by the encouragement of learning, science and the useful arts, without any particular reference to the poor, is regarded as a charity, is settled by a series of judicial decisions and regarded as the settled practice of a court of equity; and held that a gift in trust to pay the income in rewards for discoveries and improvements on light and heat most useful to mankind was charitable. American Academy *vs.* Harvard College, 12 Gray, 551. In the case of the Lowell Institute, a bequest to provide for the delivery of public lectures in the city of Boston, upon philosophy, natural history and the arts and sciences, for the promotion of the moral, intellectual and physical instruction and education of the inhabitants of the city, was held to be a charity. Lowell, appellant, 22 Pick., 215. And in Northampton *vs.* Smith, 11 Met., 390, the Court recognized the validity of a bequest, payable at a future day, to a town, to establish model and experimental farms to promote the knowledge of the art and science of agriculture. The apparently inconsistent statement of Chief Justice Shaw, in Sanderson *vs.* White, 18 Pick., 333, that since the passage of the statute of 43 Eliz. all gifts are to be deemed charitable which are enumerated in that statute as such, and none other, is shown by referring to the case of Morice *vs.* Bishop of Durham, which he cites in its support, to have omitted, either by accident or as immaterial to the case then under consideration, the words added by Sir William Grant, and in substance repeated by Lord Eldon in that case, or which by analogies are deemed within the spirit and intendment. 9 Vesey, 405. 10

Vesey, 541. See also Sohier *vs.* St. Paul's Church, 12 Met., 250. Earle *vs.* Wood, 8 Cush., 445, and cases cited.

"This gift to the town of Natick, to establish a library for the use of all the inhabitants was, therefore, clearly a public charity."

The principle of this decision, that the Courts of Massachusetts are not restrained to the objects enumerated in the statute of Elizabeth, and that libraries, being within the province of the statute, are the same as though directly named therein, applies with increased force in Pennsylvania, where it is familiar, that, in the language of Gibson, C. J., in Witman *vs.* Lex, 17 Serg. & Rawle, 93, "Not professing to found our jurisdiction on the statute of Elizabeth, we are not bound, like the English courts, to restrain it to cases specifically enumerated in the preamble."

So in Mann *vs.* Mullin, 4 Weekly Notes, 255, the Supreme Court (per Sharswood, J.) said:—"The foundation upon which the doctrine of charitable uses rests in this State, is firmly settled. While the statute of 43 Elizabeth is not in force, the principles which the English chancery has adopted on the subject obtains here, not by virtue of the statute but as part of our common law. The fact is that those principles were recognized and applied in England before the statute, which only introduced a new remedy. Hence trusts for charities with us have always been upheld and enforced, no matter how uncertain were the objects, and though the effect evidently was to create a perpetuity."

See, also, Wright *vs.* Linn, 9 Barr, 433.

Zimmerman *vs.* Anders, 6 Watts & Serg., 218.

And by the act of 26th April, 1855 (P. L. 331, Purdon, 207, pl. 18), it is expressly provided that "No disposition of property hereafter made for any religious, charitable, LITERARY or scientific use shall fail for want of a trustee,"

and the doctrine of *cy près* is extended to such dispositions.

The same doctrine was again held in Beaumont *vs.* Oliveira, Law Rep., 6 Eq. Cas., 534, wherein the Royal Society and the Royal Geographical Society were declared to be charities. These societies were supported by voluntary contributions and by private gifts; neither schools nor teaching were conducted under their auspices, and the corporations had for their object the improvement "of natural knowledge and the improvement and diffusion of geographical knowledge."

Upon appeal this was affirmed, Lord Justice Selwyn saying, "The objects of both these societies are public, and they are both societies for the advancement of objects of general public utility; and the vice-chancellor has referred to the judgment of Sir John Leach, in Attorney-General *vs.* Heelis (2 Sim. & Stu., 67), in which he said, '*I am of the opinion that funds supplied from the gift of the Crown, or from the gift of the Legislature, or from private gift, for any legal, public or general purpose, are charitable gifts, to be administered by courts of equity.*' It was said by the counsel for the appellants that Lord Eldon, in Attorney-General *vs.* Mayor of Dublin (1 Blight, N. S., 312), had expressed his dissent from the judgment of Sir John Leach, in Attorney-General *vs.* Heelis; but in the case of Attorney-General *vs.* Eastlake (11 Hare, 205), the present lord chancellor, when vice-chancellor, pointed out that this expression of dissent on the part of Lord Eldon related to a different part of the judgment of Sir John Leach. After stating (11 Hare, 222) that the exception taken by Lord Eldon to the judgment in Attorney-General *vs.* Heelis was that the source from which the funds came is not material, as stated by Sir John Leach, but that the criterion is the purpose to which they are applied, and the question is, whether that is

a charity or not; he says:—'IT IS SUFFICIENT TO SAY IT IS A LARGE AND GENERAL PURPOSE FOR THIS TOWN, ALTHOUGH NOT BEYOND THE LIMITS OF THE TOWN."

By a similar application of this doctrine in The City of Philadelphia *vs.* The American Philosophical Society, 6 Wright, 9, the latter society were declared to be exempt from taxation; and the same decision was made concerning the University of Pennsylvania, in The City *vs.* The Trustees of the University, 8 Wright, 361.

And upon principle, it is impossible to discriminate between an institution for educational purposes, where education is imparted by others, such as a college (which is expressly named in the statute of Elizabeth and universally conceded to be a charity), and a library open to all, where a student can teach himself. *

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* The case of Thompson *vs.* Shakespeare, 1 DeGex, Fisher & Jones, 399, and Carne *vs.* Long, 2 *id.*, 75, are plainly distinguishable.

The former was a bequest to trustees, "to form a museum at Shakspeare's house, in Stratford, *and for such other purposes* as my said trustees shall think fit and desirable, for the purpose of giving effect to my wishes;" and it was obviously held not to be a charity, the chancellor saying:—"I think we might get over the alleged uncertainty as to the erection of a museum at Shakspeare's house, because applying the common understanding to that phrase 'museum' we could perfectly well direct what ought to have been done, and at Shakspeare's house, which is the locality. But then follows what seems to me to be fatal to the bequests as to private individuals, 'and for such other purposes as my said trustees, in their discretion shall think fit and desirable for the purpose of giving effect to my wishes.' *This is something beyond the formation of a museum, and it is something not necessarily* ejusdem generis, *when this is not to be considered a charity, and then it is 'for giving effect to my wishes.'*"

Carne *vs.* Long may be classed with Swift *vs.* Easton Society, already cited, as the bequest for the purchase and preserving books was for the use of the subscribers, *and was restricted to such subscribers.* It was obviously held not to be a charity, but a mere association for the mutual benefit of the contributors, and of no other persons. The facts were these:—The Penzance Library was established for the "purpose of purchasing and preserving books *for the use of the subscribers," and was restricted to such subscribers.* The public were not admitted to consult the books, except when strangers, and then only upon a proper recommendation, and for no longer than one month. By rule XXVII., "the property in

The number of those by whom the library is or can be used is indefinite and constantly changing, and all sums received from the hire of books and the annual payments of shareholders or commuters are applied solely to the expenses of maintenance and the increase of the stock of books.

So the property of the complainant can never be sold or divided. The original charter precludes even the possibility of such a division, as it is there provided, "That for the increase and preservation of said library every member of the said company shall and do pay into the hands of the company's treasurer for the time being the sum of ten shillings on the first Monday in May, *in every year, forever;* and those who neglect to do so shall pay such greater sum or sums in lieu thereof, at such times within twelve months then following, as by the laws of said company shall be appointed; and that in default of these payments *any delinquent shall forfeit his share in the books and estate of the said company, and be no longer a member.*

If it be objected that the directors who manage the library are elected by the commuters or members, and not by the public at large, and hence the charity, however great, is private and not public, the answer is that the argument proves too much. Every charity is notoriously governed by some sort of board—whether visitors appointed by the sovereign—trustees appointed by deed or will with provisions for

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the books and everything else belonging to the library shall be altogether vested in the officers for the time being, *who shall be trustees for the subscribers,*" and by rule XXIX. it was provided, "the institution shall not be broken up as long as ten members remain; but whenever the number shall be reduced below ten, *all donations shall be returned to the donors or their representatives who may claim the same; and the remaining books and other articles shall be forthwith sold by public auction* and the proceeds appropriated to the foundation and support of some scientific institution in the town of Penzance, to be determined by a majority of the remaining members."

necessaries—or manager chosen by a greater or less number of those who desire benefit from it. The test is, not how are they appointed, but for what end do they work? Is it for gain or profit; is it that the benefit is restricted to the members, or does the indefinite public benefit thereby? No one will dispute that the Pennsylvania Hospital is a charity. Yet the managers are chosen by contributors. They also receive patients for hire.

And, finally, if it be objected that "after all this is merely a subscription library," the answer is thus given :—

No one can doubt that an individual may give $100,000 to establish a public library, which will not the less be a purely public charity because founded by one person alone.

No one can doubt that a hundred persons may, in like manner, give $1000 each, and with like result.

No one can doubt that the result is the same, whether they actually pay in the present, or bind themselves to pay in the future.

No one can doubt that the result is the same, whether they bind themselves to pay a sum down or by installments.

No one can doubt that the result is the same, if these installments take the form of annual subscriptions (and, in point of fact, it is notorious that most of our charities are supported by annual subscriptions).

And the conclusion follows that these donors, commuters, subscribers, members, do not thereby exclude themselves from the benefit of the charity—else the logical result would be that whenever a charity was supported by public funds (*i. e.*, by taxation,) the public itself was excluded.

Nor is the case affected by the fact that the donors or subscribers may themselves derive benefit from the charity. Inside the building they have no greater rights than any of the indefinite public. It is only that they can take books out by annual commutation, instead of

paying every time. And the *motive* of the commuters in thus securing a benefit cannot affect or defect the contract which the State made with the corporation when it created it a public charity, and which it could enforce if that design were perverted. If the motive of those who endow charities were suffered to taint the charities itself, there would be an end to the law of charities.

No one can doubt that when a charter defines the purpose of a corporation and provides machinery for carrying out the purpose, the machinery becomes part of the purpose. In this case, the charter declares the purpose to be a public charity, and provides as part of the machinery for its maintenance the subscription of members, who, in common with the indefinite public, are to use the books, and this, therefore, amounts to a declaration by the State that this is a legitimate mode of conducting the charity.

II.—The Complainant is clearly an Institution of Learning within the Act of 1874, and this Legislative Interpretation of the Constitution is valid.

The complainant is clearly an institution of learning within the act of 1874, and the sole question is whether that part of the act is constitutional; in other words, is the act broader than the Constitution?

The words of the Constitution are, "institutions of purely public charity."

It is contended that the adjective "purely" takes the case out of the class just considered. But the contrary can be easily shown.

In considering the important question of the construction of the statutes framed to carry out a constitution, great respect will be paid to the legislative intent, and where the constitution admits of a broad or narrow construction

courts will not lightly disturb that which the legislature has adopted.

Upon general principles this scarcely needs authority, but the question was recently settled in a very important case.

One of the chief evils which the Constitution tried to cure was special legislation, and Article III., section 7, was very elaborate, providing, among other things, that the legislature should not pass any local or special law regulating the affairs of cities. An act of May 23d, 1874, classified cities into three classes, the first of these being those having over three hundred thousand inhabitants; and it was argued that as Philadelphia was the only city having that population, to form a class containing but one city was, in point of fact, legislating for that city, to the exclusion of all others, being the very legislation prohibited. But the Court held that thus to legislate by classification was not unlawful, and in particular referred to the Constitution of Ohio, from which our own was borrowed in this respect, and to the decision in Walker *vs.* City of Cincinnati, 21 Ohio St., 14, supporting an act like our own; Wheeler *vs.* City of Philadelphia, 27 P. F. Smith.

So, too, the part of our Constitution now under consideration was borrowed from that of Ohio. The two may be thus contrasted:—

CONSTITUTION OF OHIO.	CONSTITUTION OF PENNSYLVANIA.
"Laws shall be passed taxing by a uniform rule * * all real and personal property according to its value in money, except burying-grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, * * may by general laws be exempt from taxation."	The General Assembly may by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit and institutions of purely public charity.

If we slightly transpose the order in the Ohio constitution, the contrast is clearer.

1. Public property used exclusively for any public purpose.	1 and 1*a*. Public property used for public purposes.
1*a*. Public school-houses.	
2. Houses used exclusively for public worship.	2. Actual places of religious worship.
3. Burying-grounds.	3. Places of burial not used or held for private or corporate profit.
4. Institutions of purely public charity.	4. Institutions of purely public charity.

Our own is rather better expressed, and especially does it better show the distinction between an institution that is for private profit and one that is for public benefit. The clause "institutions of purely public charity" is literally the same in both.

Similar provisions exist in the constitutions of other States, and similar statutes have carried their provisions into practical effect. Thus—

CONSTITUTION OF TENNESSEE.

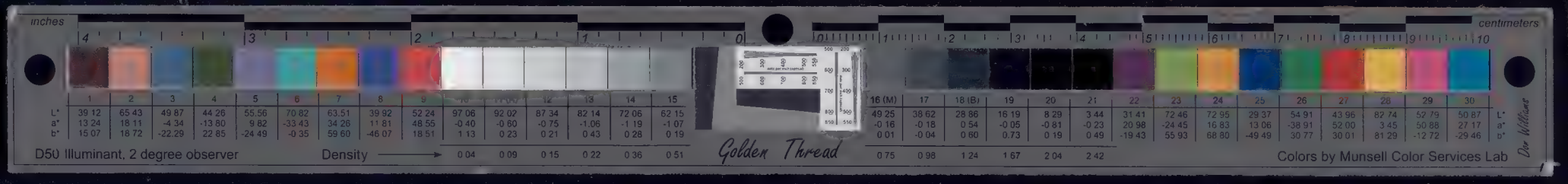
All property, real, personal or mixed, shall be taxed, but the legislature may exempt such as may be held by the State by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for puposes purely religious, charitable, scientific, literary or educational.—Art. II., section 28.

CONSTITUTION OF MINNESOTA.

Public burying-grounds, public school-houses, public hospitals, academies, colleges, universities and all seminaries of learning, all churches, church property used for religious purposes, and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose shall, by general laws, be exempt from taxation.—Art. IX., section 3.

CONSTITUTION OF ARKANSAS.

Burying-grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, shall never be taxed.—Art. X., section 2.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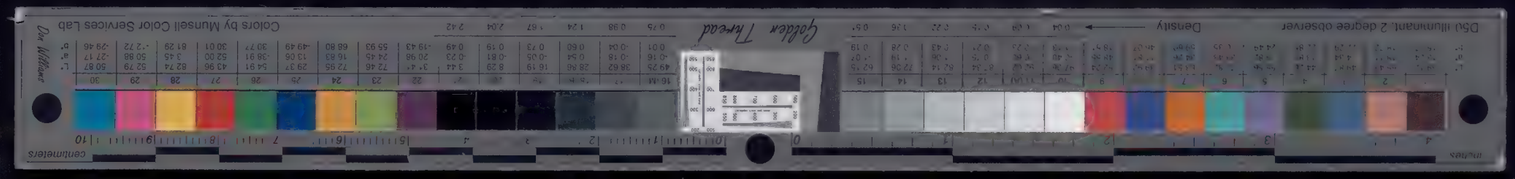
So provisions to the same general effect exist in many States, thus—

INDIANA.

The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, excepting such property only for *municipal, educational, literary, scientific, religious or charitable purposes,* as shall be specially exempted by law.—Article X., section 1.

ILLINOIS.

Such property as may be used exclusively for *school, religious, cemetery and charitable purposes* may be exempted from taxation.—Article IX., section 3.



SOUTH CAROLINA.

It shall be the duty of the General Assembly to enact laws for the exemption from taxation of all public schools, colleges *and institutions of learning, all public libraries,* churches, and burying-grounds, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons.

NORTH CAROLINA.

The General Assembly may exempt cemeteries and property held *for educational, scientific, literary, charitable or religious purposes.*—Article V., section 6.

VIRGINIA.

The legislature may exempt all property used exclusively for State, county, municipal, *benevolent, charitable, educational and religious purposes.*—Article X., section 3.

WEST VIRGINIA.

Property used for *educational, literary, scientific, religious or charitable purposes,* may, by law, be exempted from taxation.—Article VIII., section 1.

FLORIDA.

Excepting such property as may be exempted by law for *municipal, educational, literary, scientific, religious or charitable purposes.*—Article XII., section 1.

LOUISIANA.

The General Assembly shall have power to exempt from taxation all property actually used for *church, school or charitable purposes.*—Article CXVIII.

KANSAS.

All property used exclusively for State, county, municipal, *literary, educational, scientific, religious, benevolent and charitable purposes,* shall be exempted from taxation.—Article XI., section 1.

OREGON.

The Legislative Assembly shall provide, by law, for a uniform and equal rate of taxation, excepting such only for municipal, *educational, literary, scientific, religious or charitable purposes,* as may be specially exempted by law.—Article IX., section.


Gretag Macbeth
Dan Williams
inches
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D50 Illuminant, 2 degree observer
Density
Colors by Munsell Color Services Lab

The Ohio Legislature, in carrying out the constitutional requirements, passed the following general law, exempting, *inter alia*:—

"All public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same, *and all lands connected with public institutions of learning not used with a view to profit.*"

In Gerke *vs.* Purcell, 25 Ohio State R., 299, the exact question now under discussion, viz., whether the statute was broader than the constitution was presented.

"The classification of the property that may be exempted from taxation," said the Supreme Court in that case, "is much more minute in the statute than in the constitution. The constitutional provision deals with legislative power and defines its limits. The statute deals directly with the property, and classifies it according to legislative discretion; and if the property which the statute undertakes to exempt comes within the exemptions authorized by the constitution, it is immaterial how the property is classified or described."

The plaintiff Purcell was the archbishop of the Roman Catholic Church in Cincinnati, and filed a petition to enjoin the collection of taxes on different parcels of real estate held by him in trust for the sole use of the church as places of public worship, for its public schools, parsonages and other purposes. The schools were carried on with no view to profit, and were supported chiefly out of the revenues of the church, and to a small extent by such payments as parents could afford to make.

The Court held that the parsonages were not exempt from taxation, but that the schools were, as being "institutions of purely public charity."

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The Court held that the parsonages were not exempt from taxation, but that the schools were, as being "institutions of purely public charity."

"The word public," said the Court, "is used in various senses. It is sometimes applied to describe the use to which the property is applied; at others to describe the character in which it is held. The circumstance that the use of the property is free, is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public on equal terms, the use will be public whether compensation be exacted or not. Thus, on some public highways tolls are charged while others are free, but both are equally public. Railways owned by private corporations and the canals owned by the State are public highways, yet compensation is exacted from the public for their use. A college consisting of a private corporation and having a private foundation, is devoted to a public use, yet the use is none the less public because tuition is charged. * * * Two questions arise on this branch of the subject: 1. Whether the charity to which the property is devoted is purely public; 2. Whether it is competent for the legislature to recognize these schools as they are established and carried on, as institutions within the meaning of the constitutional provision.

"As to the first of these questions, it seems to us the charity is to be regarded as purely public. For the purpose of determining the public nature of the charity, it is not material through what particular forms the charity may be administered. If it is established and maintained for the usual benefit of the public and so conducted that the public can make it available, this is all that is required. * * * Laying out of view the nature of the organization by which the charity is administered, the property in question stands on the same footing as the property devoted to the support of colleges and other higher institutions of learning not founded by the State.

All of these institutions stand, as respects their claim to exemption from taxation under the constitution, on the ground of their being institutions of purely public charity. If property is appropriated to the support of a charity which is purely public, we see no good reason why the legislature may not exempt it from taxation, without reference to the manner in which the legal title is held and without regard to the form or character of the organization adopted to administer the charity. To illustrate: If the organization by which these schools are maintained were incorporated, no question could be made as to the existence of authority to exempt their property from taxation; now if the property is appropriated to the same public uses and the same ends are accomplished, we see no constitutional obstacle to prevent the legislature from exempting it as fully without incorporation as with it. What the legislature might accomplish indirectly, through the intervention of a corporation—a thing of its own creation—it may accomplish indirectly. Nor is it essential to the existence of an institution as an organization that it should be constituted under corporate or legislative authority; *in re* Manchester College, 19 Eng. L. and Eq., 404.

"A consideration of this provision of the statute shows that the word "public," as here applied to school-houses, colleges and institutions of learning, is not used in the sense of ownership, but as descriptive of the uses to which the property is devoted. The schools and instruction which the property is used to support must be for the benefit of the public. The word *public*, as applied to school-houses, is obviously used in the same sense as when applied to colleges, academies and other institutions of learning. The statute must be construed in the light of the state of things upon which it was intended to operate. At the time of its passage there were few, if any (and we know of none), colleges or academies in the State owned by the public, while

there were many such institutions in the different parts of the State owned by private, corporate or other organizations and founded mostly by private donations.

"Besides, the condition prescribing that the property, in order to be exempt, must not be used with a view to profit, does not seem appropriate if intended to apply only to institutions established by the public. Such institutions are never established and carried on by the public with a view to profit. But the condition has marked significance when applied to private property, which is often used for the purposes of education, like property in ordinary business, as a means of profit. BUT WHEN PRIVATE PROPERTY IS APPROPRIATED TO THE SUPPORT OF EDUCATION FOR THE BENEFIT OF THE PUBLIC WITHOUT ANY VIEW TO PROFIT, IT CONSTITUTES A CHARITY WHICH IS PURELY PUBLIC. WHEN THE CHARITY IS PUBLIC, THE EXCLUSION OF ALL IDEA OF PRIVATE GAIN OR PROFIT IS EQUIVALENT, IN EFFECT, TO THE FORCE OF 'PURELY,' AS APPLIED TO PUBLIC CHARITY IN THE CONSTITUTION."

But apart from this, it is an important element in the argument that each and every class of subjects exempted from taxation by the act of 1874 had, long before its passage, been judicially declared to be public, and therefore *purely* public charities."

CLASSES OF SUBJECTS EXEMPTED BY THE ACT OF 1874.	PREVIOUS DECISIONS AS TO OTHER CLASSES OF SUBJECTS.
1. "All churches, meeting-houses, and other places of religious worship."	1. Expressly mentioned in statute of 43 Elizabeth; Earle *vs.* Wood, 8 Cushing, 437; Dexter *vs.* Gardner, 7 Allen, 245; 2 Perry on Trusts, section 701, and a cloud of other authorities.
2. "All burial-grounds not used or held for private or corporate profit."	2. Lloyd *vs.* Lloyd, 10 Eng. Law and Eq., 139; 2 Simons (N. S.), 255; Dexter *vs.* Gardner, 7 Allen,

	247; Swasey *vs.* American Bible Society, 57 Maine, 527; Willis *vs.* Brown, 2 Jurist, 987.
3. "Hospitals."	3. Reading *vs.* Lane, Duke on Uses, 81; Attorney-General *vs.* Kell, 2 Beavan, 575; Helham *vs.* Anderson, 2 Eden, 296; Mayor *vs.* Elliott, 3 Rawle, 170.
4. "Universities, colleges, seminaries, academies."	4. Porter's Case, 1 Rep., 25 *b.*; Attorney-General *vs.* Wharwood, 1 Vesey, 537; Christ's College, 1 Eden, 10; Platt *vs.* St. John's College, Duke, 77; Attorney-General *vs.* Andrew, 3 Vesey, 633; Jesus College, Duke, 78; Attorney-General *vs.* Bowyer, 3 Vesey, 714; Attorney-General *vs.* Margaret Professorship, 1 Vernon, 55; Vidal *vs.* Girard, 2 Howard, 127; Cresson's Appeal, 6 Casey, 437; Miller *vs.* Porkin, 3 P. F. Smith, 292.
5. "Associations and institutions of learning, benevolence and charity, founded, endowed and maintained by public or private charity."	5. Drury *vs.* Natick, 10 Allen, 169; Jackson *vs.* Phillips, 14 Allen, 552; Pickering *vs.* Shotwell, 10 Barr, 23; President of the United States *vs.* Drummond, cited 7 House of Lords Cases, 141, 155; Beaumont *vs.* Oliveira, Law Rep., 6 Eq. Cases, 534; 4 Chan. Ap., 309.
6. "School-houses belonging to any county, borough or district."	6. Hadley *vs.* Hopkins, 14 Pickering, 241; State *vs.* McGowen, 2 Iredell Eq., 9; Rugby School *vs.* Duke, 80; Gibbons *vs.* Maltyard, Popham, 6; Atty. Gen. *vs.* Williams, 4 Brown's Chan., 525; Atty. Gen. *vs.* Bowles, 2 Vesey, 547; Graham *vs.* Graham, 1 Hawks, 96; Atty. Gen. *vs.* Lonsdale, 1 Simons, 109; Martin *vs.* McCord, 5 Watts, 494; Wright *vs.* Lynn, 9 Barr, 433.
7. "Court-houses, jails."	7. Of course included in constitutional provision of "public property used for public purposes."

III.—The decision of the Board of Revision of Taxes cannot be reversed in a collateral proceeding.

By the act of March 14th, 1865, P. L., 320, section 1 (Purdon, page 1375, pl. 123), it was enacted, "That the Court of Common Pleas of Philadelphia County shall, once in every three years, before the time of the revision of the taxes for the succeeding year and as often as vacancies shall occur, appoint two persons deemed the most competent, who, with the senior city commissioner for the time being, shall compose the board of revision of taxes of the county, a majority of whom shall be a quorum; who shall have the power to revise and equalize the assessments by raising or lowering the valuation either in individual cases or by wards, to rectify all errors, to make valuations where they have been omitted, and to require the attendance of the assessors or other citizens before them for examination on oath or affirmation either singly or together, with power to forfeit the pay of assessors ratably to their annual compensation for each day's absence when their attendance is required; and the said BOARD OF REVISION SHALL HEAR ALL THE APPEALS AND APPLICATIONS OF THE TAX-PAYERS, SUBJECT TO AN APPEAL FROM THEIR DECISION TO THE COURT OF COMMON PLEAS OF THE COUNTY, WHOSE DECISION SHALL BE FINAL, AND, IF THE APPEAL TO THE COURT SHALL BE GROUNDLESS THE APPELLANT SHALL PAY THE COSTS OF COURT; the city commissioners *shall have no power to correct or revise the taxes*, but shall receive in writing the request of the tax-payers to have their taxes reduced *and lay them before the board of revision* at the next meeting; the board of revision shall hear the tax-payers of their respective wards in succession, of which notice shall be given as now required by law by the commissioners and assessors, and the said board of revision shall, alone, by

a majority of them, exercise all the powers heretofore vested in the county board of revision, but shall not in any instance lower the aggregate valuation of the county; they shall meet as often but not oftener than is necessary to dispatch the business which their duties require of them, and shall hold stated meetings on the first Saturday of each month and receive the same compensation as the city commissioners, but the senior commissioner shall receive no additional pay for his services in the board of revision."

By a supplement of February 2d, 1867, P. L., 137 (Purdon, 1378, pl. 137), it was also provided :—

"SECTION 2. That the Board of Revision established by the act to which this is a supplement, approved the fourteenth day of March, one thousand eight hundred and sixty-five, and this supplement, shall have and exercise all and singular the powers heretofore, by law, conferred upon the commissioners of the city of Philadelphia, and the county commissioners of the different counties of this Commonwealth, in relation to the assessors, and the assessments and collection of taxes within the city and county of Philadelphia, and the correction of all valuation and return therefor; and they shall issue the precepts to, and receive the returns of the assessors, procure the assessment books, and cause the duplicates to be made out and issued to the receiver of taxes, make the returns required by law to the State revenue board, and have the exclusive custody and control of all books relating to the assessments of taxes, and keep them arranged according to wards and dates; and also have the custody and control of the duplicate surveys, when the same shall have been made by the department of surveys; they may issue certificates to show how property has been assessed, to be used with the same effect as the original books of assessment, as evidence in relation to the title of property; they shall report to

councils, through the mayor, the aggregate of the assessments on or before the first day of November, in each year; the city commissioners of Philadelphia shall exercise none of the powers embraced in this act or the act to which this is a supplement.

"SEC. 3. That the said board of revision are hereby authorized and empowered to issue their precept to the several assessors of the said city and county of Philadelphia, in the year of the triennial assessment and to the assessors of any ward or wards of said city in which they shall deem a new assessment necessary in any subsequent year other than the triennial year, requiring them to return the names of all taxable persons residing within the respective wards and all property taxable by law, together with the just valuation of the same, in the manner now prescribed by law for the triennial assessment; that the said board shall have the power to revise and equalize the assessments prescribed by the first section of the act, approved the fourteenth day of March, in the year one thousand eight hundred and seventy-five, to which this is a supplement, in any and every year."

And by the act of April 12th, 1873, P. L. 715 (Purdon, 1821, pl. 4), it was further provided that the Board of Revision should divide the city into districts, with power to re-arrange the same as often as deemed expedient; that they should appoint and remove assessors, and by section 4, "The said Board of Revision are hereby authorized and empowered to affix the seal of the city of Philadelphia in official certificates they may be authorized to issue by law."

The defendant was appointed by virtue of an act approved March 24th, 1870, P. L. (Purdon 1379, pl. 142), wherein it is provided that the receiver of taxes should "appoint a person to be denominated collector of all *outstanding* or *delinquent* taxes due the city;" and that it should be "the duty of the said receiver of taxes to hand

over immediately to said collector the registries of all *outstanding* or *delinquent* taxes due and owing said city, and upon the first day of February, A. D. 1871, and each succeeding year, the registry of DELINQUENTS of the previous year."

By section 4 it is provided, "In case the said collector of outstanding and delinquent taxes shall neglect or omit to file any claim placed in his hands for collection not paid, or shall neglect or omit to proceed to sell any real estate against which a lien exceeding ten dollars may have been filed according to the foregoing provisions of this act, such neglect or omission shall be deemed a misdemeanor in office, and punishable upon conviction by a fine not less than three times the amount of said delinquent taxes, and removal from office by the Court in which such conviction shall take place: *Provided*, That the provisions of this section shall not apply to any claims for taxes which the board of revision may decide cannot be collected, and may order to be stricken from the registry.

"SECTION 5. The compensation of the said collector shall be five per cent. upon the amount he shall collect and pay over to the city treasury."

Hence it is submitted :—

1. That the Board of Revision of Taxes is the tribunal in whom exclusive jurisdiction over this subject is principally vested.

2. That the statute creating this special jurisdiction having provided an express mode of appealing therefrom, all other methods are presumably excluded.

3. That the defendant can only collect taxes which appear to be outstanding and delinquent upon the books prepared under the authority of the Board of Revision and

delivered to the Receiver of Taxes, and as by those books the complainant was not subject to taxation, it can in no sense be a delinquent tax-payer.

4. That the fourth section of the act of March 24th, 1870, is express that the Collector of Delinquent Taxes is neither accountable for, nor in any way concerned with, the allowances and disallowances of the Board of Revision, but is absolutely bound thereby.

WM. HENRY RAWLE,
R. C. MCMURTRIE,
For Complainant.